

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re: Bachovchin et al.

Patent No.: 7,276,371

Application No.: 10/725,952

Filed: December 1, 2003

For: **Stimulation of Hematopoietic Cells In Vitro**

Confirmation No. 3968

Group Art Unit: 1631

Examiner: Michael L. Borin

Date: March 26, 2010

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT

Sir:

Pursuant to 37 C.F.R. § 1.705(d) and the concurrently submitted Request for Suspension of 37 C.F.R. §1.183 in view of the holding of the U.S. Court of Appeals for the Federal Circuit in *Wyeth v. Kappos* (Appeal No. 2009-1120) that the U.S. Patent and Trademark Office (USPTO) has been incorrectly calculating patent term adjustment, Patentee submits this request for revision of patent term adjustment (PTA) for the above-referenced U.S. Patent No. 7,276,371 ('371 patent), issued October 2, 2007. Pursuant to the CAFC decision in *Wyeth*, Patentee is entitled to an additional 305 days of patent term adjustment. Accordingly, reconsideration of the final PTA calculation to increase total PTA from 467 days to 772 days is respectfully requested.

Pursuant to 37 C.F.R. § 1.705(b)(1), provided herewith is authorization to charge Deposit Account No. 50-0220 in the amount of \$200.00 as the fee set forth under 37 C.F.R. § 1.18(e).

Pursuant to 37 C.F.R. § 1.705(b)(2) provided below is the following statement of facts.

"A" Delay

A first PTO action was due on or before February 1, 2005 (the date that is fourteen months after December 1, 2003, the date on which Patentee filed the application under 35 U.S.C. § 111(a)). The PTO mailed the first non-final Office Action on July 3, 2006, thereby according a PTO delay of 517 days. Patentee does not dispute the PTO's calculation for this "A" delay from

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February 2, 2005 (the day after the date that is fourteen months after the date on which Patentee filed the application under 35 U.S.C. § 111(a)), to July 3, 2006. See 37 C.F.R. §§ 1.702(a) and 1.703(a)(1).

“B” Delay

The present application was filed on December 1, 2003. The period beginning on December 2, 2006 (the day after the date that is three years after December 1, 2003, the date that the application was filed) and ending October 2, 2007 (the date the patent was issued) is 305 days in length.

Thus, the total “B” delay for this patent should be calculated to be 305 days. The PTO calculated 0 days of “B” delay for issuance of a patent more than three years after filing. Patentee respectfully submits that the PTO’s calculation of this “B” delay is incorrect and that the correct PTO delay for issuance beyond three years from filing is 305 days. See 37 C.F.R. §§ 1.702(b) and 1.703(b).

Overlap of “A” and “B” Delay

As detailed above, “A” delay accumulated during the following period:

February 2, 2005 to July 3, 2006.

As detailed above, “B” delay accumulated during the following period:

December 2, 2006 to October 2, 2007.

There is no overlap in the “A” delay and the “B” delay.

Applicant Delay

Applicant delay for the present application constituted 33 days from January 14, 2006 to February 15, 2007; 14 days from February 14, 2007 to February 27, 2007; and 3 days from August 25, 2007 to August 27, 2007. Thus, the total Applicant delay constituted 50 days. Patentee does not dispute the PTO’s calculation for Applicant delay.

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Terminal Disclaimer

This patent is subject to a terminal disclaimer to U.S. Patent No. 6,703,238, which expires on September 29, 2018 and U.S. Patent No. 6,258,597, which expires on September 29, 2018.

Conclusion

In consideration of the events described above, the PTA calculation of a total of 467 days for this patent is believed to be incorrect. As such, Patentee respectfully requests recalculation of the PTA for this patent in the following manner:

- 1) Total PTO delay should be calculated as 822 days (i.e., the sum of 517 days of "A" delay and 305 days of "B" delay);
- 2) Total Applicant delay should be calculated as 50 days; and
- 3) Total PTA should be calculated as 772 days.

Accordingly, Patentee requests that the '371 patent be accorded the correct total PTA of 772 days.

As noted above, the Commissioner is authorized to charge Deposit Account No. 50-0220 in the amount of \$200.00 as the fee set forth pursuant to 37 C.F.R. § 1.18(e). This amount is believed to be correct. However, the Commissioner is authorized to charge any deficiency or credit any overpayment to Deposit Account No. 50-0220.

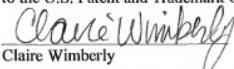
Respectfully submitted,



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CERTIFICATION OF ELECTRONIC TRANSMISSION
I hereby certify that this correspondence is being transmitted via the Office electronic filing system in accordance with § 1.6(a)(4) to the U.S. Patent and Trademark Office on March 26, 2010.



Claire Wimberly